

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

KIMBERLY DUKES
Plaintiff,

V.

FIESTA MART LLC

Defendant.

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CIVIL ACTION NO. _____

NOTICE OF REMOVAL

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TO THE UNITED STATES DISTRICT COURT:

Defendant FIESTA MART LLC pursuant to 28 U.S.C. §§1441 and 1332, provides notice of removal of this action styled *Kimberly Dukes v. Fiesta Mart LLC*, Cause No. 202069098, currently pending in the 164th Judicial District Court of Harris County, Texas, and in support thereof, respectfully shows unto this Court as follows:

1. Plaintiff Kimberly Dukes filed her Original Petition on October 27, 2020, claiming damages from a slip and fall. Plaintiff served Defendant with the citation on October 29, 2020, therefore, this notice is timely under 28 U.S.C. § 1446(b).

2. Pursuant to 28 U.S.C. §1446 and the Local Rules of the United States District Court for the Southern District of Texas, attached are the following:

- a. All executed process in the case (Exhibit A);
- b. Pleadings asserting causes of action and all answers to such pleadings (Exhibit B);
- c. All orders signed by the state judge (none);
- d. The docket sheet (none);
- e. An index of matters being filed (Exhibit C);
- f. A list of all counsel of record, including addresses, telephone numbers, and parties represented (Exhibit D).

These documents represent all that are presently available as required.

4. The District Courts of the United States have original jurisdiction over this action by reason of diversity of citizenship between the parties. 28 U.S.C. §1332. Plaintiff's Original Petition alleges that Plaintiff Kimberly Dukes resides in Harris County, Texas, and therefore is a citizen of the state of Texas. Although Defendant Fiesta Mart LLC, is a limited liability company organized under the laws of Texas, its sole member is Bodega Latina Corp., a Delaware corporation with its principal place of business, or its "nerve center" in California. *See* Exhibit E. Defendant Fiesta Mart LLC's citizenship as an LLC is determined by the citizenship of its members.¹ A corporation, such as Bodega Latina Corp., is deemed to be a "citizen" of the state where it maintains its principal place of business (its "nerve center") and the state of its incorporation.² Therefore, Defendant is a citizen of the states of Delaware and California, the principal place of business and the state of incorporation of Fiesta Mart LLC's sole member, Bodega Latina Corp.

5. Plaintiff's Original Petition in the state court seeks damages over \$200,000 but not more than \$1,000,000, and thus the amount in controversy exceeds the sum of seventy-five thousand dollars (\$75,000.00), exclusive of interests and costs.

6. Removal of this cause of action is proper under 28 U.S.C. §1441. It is a civil action brought in state court and the District Courts of the United States have original jurisdiction over this action under 28 U.S.C. §1332, since the plaintiff and the defendant are diverse in citizenship.

7. As required by 28 U.S.C. §1441, the 164th Judicial District Court of Harris County, Texas falls within the geographical purview of this Court, and thus, venue is proper in the United States District Court of the Southern District of Texas, Houston Division.

¹ *See e.g., Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008).

² *See* 28 U.S.C. §1332(c)(1); *see also, Hertz Corp. v. Friend*, 559 U.S. 77, 130 S. Ct. 1181, 1185-86 (2010).

8. Written notice of the filing of this Notice of Removal is being promptly given to Plaintiff and a notice of Filing of Notice of Removal is promptly being filed with the 164th District Court in Harris County, Texas, as required by 28 U.S.C. §1446(d).

WHEREFORE, PREMISES CONSIDERED, Defendant Fiesta Mart, LLC d/b/a Fiesta Mart #51 prays that the state action now pending in 164th District Court in Harris County, Texas, be removed to this Court, and for any further relief to which Defendant is justly entitled.

Respectfully submitted,
MEHAFFYWEBER, P.C.

By:/s/Maryalyce W. Cox
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ATTORNEYS FOR DEFENDANT
FIESTA MARY LLC (D/B/A FIESTA
MART #51)

CERTIFICATE OF SERVICE

In addition to e-filing, this is to certify that a true and correct copy of the above and foregoing instrument has been forwarded by Certified Mail, return to receipt requested, to all counsel of record on this the 24th day of November, 2020 pursuant to both the Texas Rules of Civil Procedure and the Federal Rules of Civil Procedure. .

Maryalyce W. Cox
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